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The Costs of the Canadian Government's Reconciliation Framework for First Nations

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by Tom Flanagan

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Executive summary

Prime Minister Justin Trudeau has made reconciliation with Indigenous peoples a leading objective of his government. This publication attempts to identify the budgetary costs of the policy measures associated with Trudeau's "Reconciliation Framework," as well as to assess how effective these measures are likely to be. History provides some guidance because Trudeau's Reconciliation Framework bears some resemblance to United States President Lyndon Johnson's "Great Society" of the 1960s.

First-level costs are those already incorporated in the three budgets of the Liberal government, starting with Budget 2016, which announced an increment of \$8.4 billion over five years to Indigenous programming. Further increases, not always clearly linked to the 2016 announcement, were contained in Budget 2017 and Budget 2018. The best overall estimate of the increases is \$16.5 billion over seven years, or about \$2.4 billion a year, starting with fiscal year 2016/17. This raises Indigenous spending as a share of all federal program spending from about 3% under Prime Minister Stephen Harper to something closer to 4%. Departmental reorganization and transfer of programs precludes a more precise estimate at this time.

Second-level expenditures arise from compensation for historical injustices, including the residential schools in Newfoundland & Labrador, the "Sixties Scoop," and Indian hospitals, as well as for specific claims, forgiveness of loans to First Nations, expanded eligibility for enrolment on the Indian Register, and Métis claims. These first two are relatively advanced so that costs can be reliably estimated. The other five are in various stages of negotiation, litigation, and implementation, so that assigning costs is much more difficult. Estimates for these seven initiatives over five years are \$1.8 billion (minimum), \$3.7 billion (medium), and \$5.7 billion (maximum). Thus the \$16.5 billion already budgeted may become a total of over \$20 billion when compensatory expenses are added.

Canadians would probably find these increased expenditures worthwhile if they raised the standard of living of Indigenous peoples and brought about a better relationship with other Canadians. However, there are already signs of difficulty in some major initiatives, such as the attempt to lift all long-term water advisories on Indian reserves, the National Inquiry into Missing and Murdered Indigenous Women and Girls, and the Integrated Commercial Fisheries Strategy.

But even if all programs worked perfectly, the experience of the Great Society raises doubts about results. The economic and social condition of African-Americans, which had been improving prior to the passage of Great Society legislation, actually worsened in the 1970s when that legislation was implemented. As much current research shows, minorities cannot achieve a higher standard of living and greater well-being solely through government spending; they must pursue strategies of economic self-improvement, both individually and collectively.

Introduction

During the 2015 federal election campaign, Liberal Leader Justin Trudeau made an important speech to the Assembly of First Nations in which he explained his approach to Indigenous issues. The leading concept in that speech was a “Reconciliation Framework” embracing many policy initiatives (Liberal Party of Canada, n.d.). On National Aboriginal Day in 2016, Trudeau went on to add: “No relationship is more important to our government and to Canada than the one with Indigenous peoples” (Prime Minister of Canada, 2016).

“Reconciliation” is a term that can mean many different things (Henderson and Wakeham, 2013; Turner, 2013). Here is not the place for philosophical analysis; I simply treat reconciliation as a portmanteau concept for the aggregate of Indigenous policies advocated and implemented by the current federal government. These policies are numerous and important, such as dividing the former Department of Indigenous and Northern Affairs (INAC) into the two Departments of Indigenous Services and Crown-Indigenous Relations and Northern Affairs; launching a National Inquiry into Murdered and Missing Indigenous Women and Girls; suspending enforcement of the First Nations Financial Transparency Act, which required publication of salaries of First Nations’ chiefs and councillors; and many other initiatives—too much for analysis in one paper.

The emphasis here will be on policy initiatives with major fiscal implications. Reconciliation with Indigenous peoples, whatever its precise meaning, may be a desirable objective, but both policy makers and the general public should be aware of its costs. Without an understanding of costs, it is impossible to make informed decisions about balancing the many priorities for which government has to be responsible. This publication, therefore, updates the Fraser Institute’s series of publications on the cost of government programs for Aboriginal peoples (Flanagan and Jackson, 2017; Bains and Ishkanian, 2016; Milke, 2013).

Broadly speaking, the costs of reconciliation may be divided into two categories. First are forward-looking or prospective expenditures for better government services and programming for Indigenous peoples. Second are expenditures designed to compensate for past wrongs done to Indigenous people. These costs will eventually have to be incorporated into government budgets, because in our parliamentary democracy all spending must be approved by the legislature; but they are retrospective inasmuch as they are based more on a present evaluation of past events than on a calculation of future effects.

Budgetary Expenditures

When the first budget of the Trudeau government was released in March 2016, the Minister of Finance promised “to invest \$8.4 billion over five years, beginning in 2016–17, to improve the socio-economic conditions of Indigenous peoples and their communities and bring about transformational change” (Canada, 2016: 134). The spending initiatives covered a wide range of policies, including education, child protection, clean water, housing, and governance. As the Minister noted, this was even more than had been promised in the Kelowna Accord, which the Harper government had decided not to implement after taking office in 2006. In fact, the total of \$8.4 billion was 40% larger than the Kelowna Accord, even allowing for inflation (Flanagan and Jackson, 2017: 15).

Subsequent Liberal budgets have reinforced the message of greater spending, though with each new announcement the budget documents have become more opaque. Budget 2017 proclaimed that “by 2021–22, total federal government spending on programs for First Nations, Inuit and Métis in Canada will increase from over \$11 billion in 2015–16 to over \$14 billion in 2021–22, an increase of 27 per cent” (Canada, 2017). Budget 2018 promised additional spending of \$4.757 billion over the next five fiscal years, without explaining how those promises related to the earlier promises in the two preceding budgets (Canada, 2018a). Assembly of First Nations Chief Perry Bellegarde estimated the total increases announced in the three budgets to be \$16.5 billion spread over seven years (Barrera, 2018). This is probably the best available estimate because the AFN headquarters are in Ottawa and the organization is politically close to the current Liberal government. A total of \$16.5 billion additional spending over seven years amounts to an average annual increase of about \$2.4 billion over fiscal 2015/16, the last Harper budget.

The best instrument for tracking actual increases in federal spending is the Public Accounts, which reports audited spending totals, but the Public Accounts are always about 18 months behind the budget speech. For example, the Public Accounts for the 2018/19 fiscal year will not be released until fall 2019, whereas the budget speech was delivered in March 2018. A more up-to-date indicator is the Main Estimates, which are released in spring of the year not long after the budget speech. They do not include the new spending promised in the budget speech; those items will be revealed later in the year in three instalments called Supplementary Estimates. But they do incorporate the previous year's Supplementary Estimates. Thus the Main Estimates for 2018/19 are a more or less complete record of what the government intended to spend in fiscal 2017/18.

Table 1 shows the Main Estimates for the department of Indigenous and Northern Affairs Canada (INAC) for the fiscal years 2012/13 to 2018/19. Because there is essentially a one-year lag in the Main Estimates, the first five years represent spending decisions of the Harper government, while the last two represent spending decisions of the Trudeau government. Note the large increases once the Trudeau government's spending decisions become apparent. Total federal spending increased from about \$250 to \$276 billion in two years, while INAC spending increased even more rapidly—from about \$7.5 to \$12.4 billion in the same period of time.

The last figure is misleading, however, because the former INAC department has been split into the departments of Indigenous Services and of Indigenous-

Table 1: Main Estimates and budgetary expenditures for Indigenous and Northern Affairs Canada, 2012/13–2018/19

| | Total budgetary expenditures from Main Estimates | Total budgetary expenditures from Main Estimates for Indian Affairs and Northern Development | Percentage of budget devoted to Indigenous spending |
|---------|--|--|---|
| 2012/13 | \$251,896,150,000 | \$7,718,288,000 | 3.06% |
| 2013/14 | \$252,535,057,459 | \$7,904,970,562 | 3.13% |
| 2014/15 | \$235,334,374,675 | \$8,053,975,405 | 3.42% |
| 2015/16 | \$241,574,296,708 | \$8,187,417,868 | 3.39% |
| 2016/17 | \$250,136,477,494 | \$7,505,552,140 | 3.00% |
| 2017/18 | \$257,917,634,586 | \$10,056,790,513 | 3.90% |
| 2018/19 | \$275,967,721,577 | \$12,409,416,822 | 4.50% |

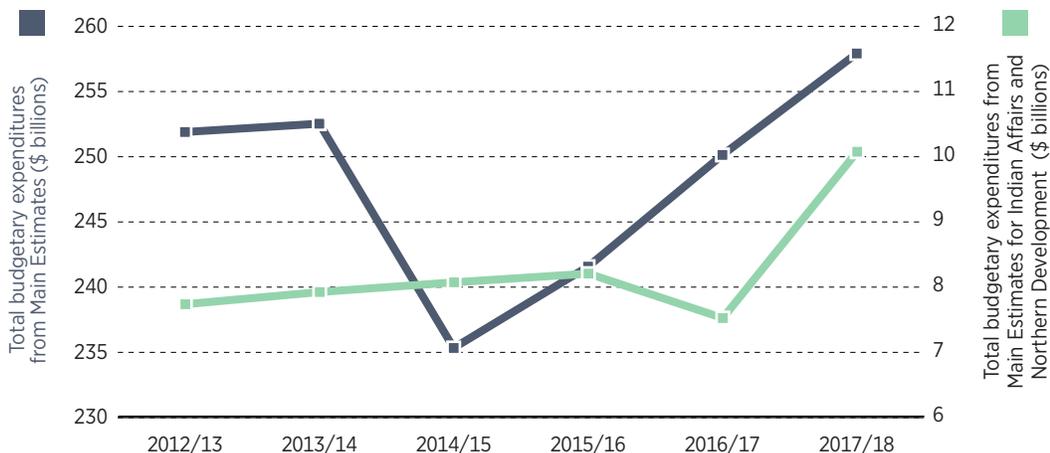
Sources: Canada, 1996–2018 [estimates].

Crown Relations and Northern Development. The spending reported here for INAC in 2018/19 is the total for both departments. Moreover, Indigenous programs once scattered around the federal bureaucracy in various departments and agencies are being transferred to these two new departments, with the Department of Health's large Indigenous program being an early transfer to the Department of Indigenous Services. The Department of Health's total in the 2018/19 Main Estimates is, therefore, about \$2.5 billion less than in 2017/18, about the size of the increase in total INAC spending over the same year. Thus the INAC spending figure for 2018/19 is artificially inflated; \$10 billion would probably be a better estimate to keep it comparable to past years, but it is impossible to be precise amidst the flux of departmental spending and reorganization.

Under the Trudeau government, INAC spending has risen more rapidly than total spending, increasing from 3% of total spending in 2016/17 to 3.9% in 2017/18 and 4.5% in 2018/19 (perhaps only 3.6% if we take into account the

transfer from the Department of Health. This shift in priorities reflects the Prime Minister’s statement that Canada’s relationship with Indigenous peoples is the most important thing to his government. These changes are readily visible in **figure 1**, based on the data included in table 1 (without 2018/19, because of the uncertainty about totals in that fiscal year).

Figure 1: Main Estimates ■ and budgetary expenditures ■ for Indigenous and Northern Affairs Canada, 2012/13–2017/18



Sources: Canada, 1996–2018, [estimates]; author’s calculations.

Publicly available data allow only an approximate conclusion at this time. Keeping that in mind, it seems that what used to be considered INAC spending has taken a sudden jump of about \$2.5 billion a year, increasing from about 3% of all federal spending to closer to 4%. This is consistent with the promise in *Budget 2016* to “invest” \$8.4 billion in the welfare of Indigenous peoples over five years; with the projection in *Budget 2017* that by 2021/22 spending on Indigenous peoples would increase from something over \$11 billion to something over \$14 billion a year—a jump of 27%; and with Perry Bellegarde’s claim that the government plans to spend an additional \$16.5 billion over seven years, starting with the first Liberal budget in fiscal 2016/17. The evidence from the Main Estimates is that the Trudeau government is on track to keep its promise of spending a lot more on Indigenous peoples.

This planned increase, substantial though it may be, is probably a minimum figure. It will be driven upward by promises to compensate Indigenous people for alleged past injustices. As shown in detail in the next section, the five-year total for these promises could fall between \$1.7 and \$5.57 billion, with a rather uncertain median estimate of about \$3.4 billion. These amounts will at some point have to be incorporated into future budgets in order for payments to be made. Thus Perry Bellegarde’s estimate of \$16.5 billion additional spending over seven years may turn out to more like \$19.9 billion.

Compensatory Expenditures

Compensatory expenditures in present-day Canada share a number of features, even when there are differences in detail.

- ∞ They arise out of allegations of government wrong-doing in the past rather than considerations of how tax money might be most effectively spent in the future.
- ∞ They are driven by litigation, because the judicial process is designed to examine past events. The class action is becoming the preferred form of litigation, though constitutional challenges have also been important. The typical denouement is for the federal government to negotiate a settlement, believing that it may lose the case in court or suffer political damage even if it wins a judicial victory.
- ∞ Governments aim for finality in negotiating settlements, but that closure is limited to the particular grievances involved in the claim. In a larger context, settlements often become precedents for future claims of historical injustice involving related or similar circumstances. Given that these compensatory expenditures usually have a career as legal claims before being approved in a negotiated settlement, this is to be expected as an outcome of the common law principle of *stare decisis*.
- ∞ The benefits of the settlement flow to First Nation individuals or communities (in the case of land claims) because past wrongs have been acknowledged. Government programming is usually based on considerations of effectiveness in achieving agreed-upon objectives such as defending the nation and promoting economic growth, or on redistributive considerations of helping the less fortunate (progressive taxation, social insurance). Compensatory expenditures do not fit into either category because they are based neither on need nor on attainment of programmatic objectives.
- ∞ Judgments about the past are inevitably affected by “presentism” (Hunt, 2002), reliance on current moral conceptions that were not shared by past actors, and perhaps had not yet occurred to anyone at the time. Presentism turns the past into a fertile field for discovering injustice because it makes judgements without considering what practical alternatives could have arisen in the minds of past actors at the time in which they lived.

These common characteristics of compensatory expenditures will appear repeatedly in the following discussion.

One very large and important set of compensatory expenditures has arisen out of the federal government's attempts to deliver to First Nations the basic welfare services of education, health, and child protection. The Canadian *Constitution* generally allocates these to provincial jurisdiction, but s. 91(12) gives Parliament jurisdiction over "Indians, and Lands reserved for the Indians," authority that is further reinforced by treaties negotiated between First Nations and the federal government. Thus, for 150 years, the federal government has been offering to, or imposing upon, First Nations services in areas of provincial government expertise. Not surprisingly, the federal government's efforts often seem inadequate, especially when viewed through the present lenses of a wealthy, rights-conscious society.

Newfoundland & Labrador residential schools

The template for Indigenous compensation was set by the Residential Schools Settlement adopted in 2006 after years of class action litigation. Since 2007, almost \$5 billion has been paid to individuals in the form of Common Experience Payments as well as the Independent Assessment Process. Claims still under dispute plus associated expenses for research, commemoration, and healing will ultimately drive the total cost of the Residential Schools Settlement close to \$6 billion (Flanagan and Jackson, 2017: 5; INAC, 2017).

Shortly after winning the 2015 federal election, the new Liberal government agreed to discontinue legal actions regarding residential schools in the province of Newfoundland & Labrador. Because of their history (Newfoundland was not part of Canada until 1949), these had not been included in the 2006 Residential Schools Settlement. Now the government negotiated a settlement for Newfoundland & Labrador on principles similar to those of the 2006 agreement. The result is a \$50 million fund for individuals who attended five residential schools between 1949 and 1980, plus some collective expenses for healing and commemoration (INAC, 2018c).

In context, \$50 million is not a large amount of money. It is small compared to the \$6 billion involved in the 2006 settlement. It also seems small compared to recent settlements for individuals in other situations: for example, \$10 million for Maher Arar (*CBC News*, 2007). However, it will become a precedent for expanding the scope for future claims of historical injustice. Other than the Innu of Labrador, most of the recipients will be Inuit or mixed-race people, not First Nations. And it involved schools that were never run by Canada and were not even under Canadian jurisdiction when they were founded.

The "Sixties Scoop"

On October 5, 2017, Carolyn Bennett, Minister of Crown-Indigenous Relations and Northern Affairs, announced an agreement in principle on a settlement of the so-called "Sixties Scoop" claims (Tasker, 2017). The settlement arose out of class

actions across the country, particularly one in Ontario that had received a favourable ruling in Ontario Superior Court (Brown, 2017). The settlement will set aside \$750 million to be distributed among Inuit and First Nations people who were adopted out of their communities between 1951 and 1991 and as a result did not grow up with an Indigenous culture. It also provides \$75 million for legal fees and \$50 million for collective commemoration and healing activities. It was approved by a justice of the Federal Court of Canada in May 2018 (Canadian Press, 2018).

Minister Bennet said of the claimants, “They have lived their lives not being able to be proud Indigenous people ... They have lived their lives not having secure personal cultural identity. That was robbed away. Someone thought that a non-Indigenous family somewhere else in the world was going to do a better job” (Tasker, 2017). Jeffery Wilson, a lawyer associated with the Ontario class action, commented further:

Is \$750 million enough to redress this problem? Hard to say. How do you quantify something that has been never been tested in the law in the Western world? The whole idea is unknown ... This is a day where Canada really is a hero, because this is the first country, in a world of increasing divisiveness, that has said we respect and recognize the right to a cultural identity ... No amount of money can compensate for the harm that was suffered, but it's a step in the right direction. It's partly symbolic. (Tasker, 2017)

As Wilson points out, the novelty in this settlement is that is based solely on loss of culture. Allegations of physical and sexual abuse were central to the residential schools claims, but not here. This may be productive of future claims because many government policies might be indicted for complicity in loss of indigenous culture. Indeed, in summer 2018, the Merchant Law Group, which had been a key player in the Sixties Scoop class action, began to enrol subscribers to a new class action for “survivors” of Indian day schools (Merchant Law Group, 2018; Giesbrecht, 2018). It is too early to predict the outcome, but there is certainly potential for another large federal payout.

Indian hospitals

Just getting underway is a \$1.1 billion class action on behalf of patients at 29 Indian hospitals operated by the federal government between 1945 and the early 1980s. These hospitals were in good part a response to the plague of tuberculosis among native people. Hospitals in Canada at that time generally operated on a basis of fee for service, philanthropy, and provincial grants, so the federal government had to take the initiative for native people. At this stage, the focus of the litigation appears to be claims that the government was negligent in allowing sexual and physical abuse.

The action was filed on January 25, 2018, in Toronto. At the time of writing, the government had not yet responded, and the class had yet to be certified by a court, so it is still very early days. Trying to head off litigation, Minister Bennett has said that the federal government respects

the plaintiffs' decision [and] Canada believes that the best way to address outstanding issues and achieve reconciliation with Indigenous people is through negotiation and dialogue rather than litigation ... We are committed to working with all parties involved to explore mechanisms outside the adversarial court process to deal with these claims. (Pelley, 2018)

Based on past governmental decisions, a negotiated settlement seems possible. The financial amount cannot be predicted at this stage, though a negotiated settlement usually comes in under the amount demanded in the statement of claim.

Political actors tend to repeat what has been proven to work, so further class actions in the areas of health, education, and welfare seem likely. There will be no shortage of causes. The particular arrangements that gave rise to earlier class actions—residential schools, Indian hospitals, unilateral child protection—no longer exist, but outcomes for First Nations people still leave much to be desired. On-reserve schools are generally small, under-resourced, and lead to low graduation rates (Parliamentary Budget Officer, 2016). Indigenous children make up about half of Canadian children in care (Yükselir and Annett, 2016), even though there are now many native social workers and agencies. Health outcomes for native people are notoriously bad, especially in areas such as obesity, diabetes, addictions, suicide, and accidental injury (Statistics Canada, 2015). It should not be difficult for class action lawyers to find representative plaintiffs who can plausibly claim to have been harmed by faulty institutions. Now that the government has repeatedly signalled its willingness to negotiate, mounting such claims will be an attractive proposition.

Specific claims

Another major area of compensatory expenditure is collective in nature—so-called “specific claims,” a topic for which most readers will appreciate a bit of explanation (Flanagan, 2018). In the vocabulary of Canadian Indigenous issues, “specific claims” are made by First Nations who have already adhered to treaties but believe that the Canadian government has not properly implemented their treaty or, even if they have not signed a treaty, believe that the government has violated the Indian Act in the administration of their reserve lands or trust funds. Canada has been accepting specific claims since 1974. Against a background of frequent complaints from First Nations, Canada has reorganized the claims process three times to make it faster and more remunerative to complainants.

There were 450 settlements up to November 15, 2017, totalling \$5.7 billion (2017 dollars) in payments from the federal government. This figure does not include payments from provincial governments or the value of Crown lands transferred to First Nations as part of settlements. Approximately 400 claims are still being investigated or negotiated, and about 130 others are in some stage of litigation.

The specific claims process was originally adopted as a means for dealing with past injustices, but specific claims have turned out to be more like a flow than a stock. The process has repeatedly been made more accommodating, and legal doctrines such as fiduciary responsibility and the honour of the Crown have evolved to make success more likely. The federal government also subsidizes the preparation and negotiation of claims. These factors help explain the apparent paradox that the settlement of more and more claims has been accompanied by continual growth in the backlog of unsettled claims. Nonetheless, the Assembly of First Nations and other critics (Pelletier, 2015; Auditor General of Canada, 2016) continue to press for procedural changes that will probably result in more rapid and larger settlements.

In its 2008 reforms, the Harper government passed new legislation, the Specific Claims Tribunal Act, and set aside \$250 million a year for ten years for settlement of specific claims. The new Liberal government has rejected additional legislative change, at least for now, in favour of discussions with the AFN “to finalize a joint work plan to examine these issues and to identify fair and practical measures to improve the operation of the specific claims process” (INAC, 2016). The vague wording suggests the government may be wary of incurring new financial obligations, but past reforms have always ended up making the specific claims process more expensive for taxpayers. Stay tuned.

Loan forgiveness

In *Budget 2018*, the government announced that, from now on, negotiations for modern-day comprehensive claims will be funded by non-repayable grants rather than repayable loans. This was a prospective budgetary measure, but at the same time the government also said it “will engage with affected Indigenous groups on how best to address past and present negotiation loans, including forgiveness of loans” (Canada, 2018a). The Eyford Commission reported (2015) that, between 1973 and 2013, Canada made interest-free loans to aboriginal groups of \$817 million (nominal dollars) for treaty negotiations. It is unclear how much of this money has been repaid, but the proportion is small, probably around 10% (Forrest, 2018a).

It is also unclear how much implementation of this promise might cost. Most of it would be akin to writing off bad debts, acknowledging that money already spent in pursuit of an ineffective policy will never be recovered. But it will also lead to new outlays if, in the name of fairness, the government undertakes to

compensate First Nations that have repaid their negotiation loans. The demand is sure to be made, but will the government accept it to any degree? The maximum cost in terms of new expenditures might be in the order of \$100 million; a more realistic figure for partial compensation might be \$50 million, spread over a number of years. It is not so much the budgetary cost of forgiving and repaying loans that is at issue as the precedent it would set, for the Eyford Commission found that some First Nations had spent the money irresponsibly, even for purposes not related to negotiations.

The Indian Register

Dwarfing all these other measures in its ultimate fiscal implications is Bill S-3, *An Act to amend the Indian Act in response to the Superior Court of Quebec decision in Descheneaux c. Canada* (Procureur général), which was passed and received royal assent at the end of 2017 (S.C. 2017, c. 25). As indicated by its title, the *Act* was a response to a Quebec Court decision that had extended the criteria for enrolment on the Indian Register to perhaps an additional 30,000 people (PBO, 2017: 1). The government chose not to appeal and drafted Bill S-3 to legislate the fairly narrow criteria set forth in *Descheneaux*, but the Senate, led in this matter by feminist lawyer Marilou McPhedran, introduced amendments that dramatically broadened the criteria for registration. The government at first resisted, repassing S-3 in its original form in the House of Commons, but eventually deferred to the Senate, which again insisted on its amendments.

The *Act* in final form is far from clear and provides for further consultations with First Nations, but it undoubtedly will greatly enlarge the number of people eligible to become Registered Indians. The Parliamentary Budget Office estimates the increase in number of eligible persons at about 670,000, compared to the currently enrolled total of about 820,000 (PBO, 2017: 7). Thus the number of Registered Indians could almost double as a result of the legislation, though the increase would take place over many years and probably not all newly eligible persons would be interested in Registration.

What would it all cost? Registered Indians are entitled to supplementary medical insurance (Non-Insured Health Benefits Program), exemption from taxation on reserve, possible financial assistance for post-secondary education, and further benefits if accepted for band membership. Assuming 40% take-up of Registration, and making many further assumptions about the various financial benefits, the PBO concludes that “the total cost of Bill S-3 as amended by the Senate is expected to be about \$71 million in one-time administrative costs plus \$407 million a year in ongoing costs. The full annual costs will not be realized until all eligible persons are registered, which will take many years (PBO, 2017: 19). It would be prudent to regard this estimate as being on the low

side, as government agencies, in spite of their best efforts, have a long record of underestimating the number of people who will take up the offer of Indian status, as well as the costs involved (examples in Flanagan, 2017b). Whatever the precise figure turns out to be, it represents a significant increase to Indigenous spending. It is an instructive illustration of contemporary Parliamentary democracy that it was brought about mainly by the courts and the Senate against the desires of a cabinet supported by a majority in the House of Commons and advised by civil service experts.

Métis claims

These changes to the Indian Register probably mean that many people who now call themselves Métis will have a chance to become Registered Indians. However, the Liberals also campaigned in 2015 on the promise of a “Reconciliation Plan for the Métis Nation,” directed at the historic (fur-trade) Métis of the western provinces and northwest Ontario. After the election, the government entered into negotiations with the Métis associations of Alberta, Manitoba, and Ontario on enhanced social services, Métis self-government, and settlement of Métis land claims.

Métis land claims go back to the late 19th-century distribution of land, scrip, and money to about 24,000 individual Métis recipients in Manitoba, Saskatchewan, Alberta, and the Northwest Territories. Given the then current price for Dominion Lands of \$1.00 per acre, these benefits were worth about \$5.5 million at the time (Flanagan, 2017c: 20). Inflation will have multiplied that by a factor of at least 200 (inflationcalculator.ca), to produce a value in 2018 of at least \$1.1 billion. Métis organizations claim that their people were deprived of the value of land and scrip by distribution processes and legal rules that promoted sale at derisory prices. Gerhard Ens and I have tried to show elsewhere that these claims are unfounded (Flanagan, 1991; Flanagan and Ens, 1994), but a government that has announced in advance that it wants to settle these claims is unlikely to rely on our research. It is safe to assume that a settlement of Métis claims will cost at least \$1 billion, and perhaps as much as \$2 billion in one-time costs, plus perhaps \$100 million a year in ongoing costs for enhanced social services and self-government initiatives. These are, of course, only guesses, but I would defend the order of magnitude.

Estimated total

Table 2 attempts to estimate the total cost of these initiatives over a five-year period. Of course, much guesswork is required because firm figures exist only for the Newfoundland & Labrador residential schools payout and the Sixties Scoop, plus a sophisticated but still uncertain estimate for enlargement of the Indian Register. For the other initiatives, I have indicated a range between zero

Table 2: Estimated five-year cost of the Trudeau Government's compensation initiatives, 2019–2023

| Policy Initiative | Process/Admin Costs (\$m) | 5-Year Payments (\$m) |
|-------------------------------|---------------------------|-----------------------|
| Nfld/Lab. Residential Schools | 10 | 50 |
| Sixties Scoop | 125 | 750 |
| Indian hospitals | 0–10 | 0–1,100 |
| Specific claims | 0–50 | 0–500 |
| Loan forgiveness | 0–10 | 0–100 |
| Indian Register | 70 | 750 |
| Métis land claims | 0–100 | 0–2,000 |
| Total (minimum) | 205 | 1,550 |
| Total (maximum) | 465 | 5,250 |
| Total (medium) | 335 | 3,100 |

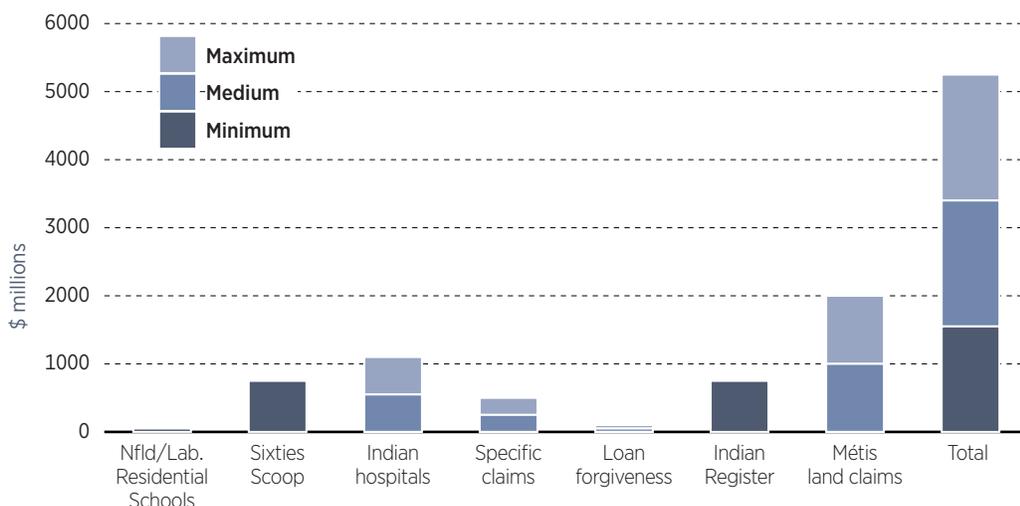
Source: author's estimates; see text for information on sources.

(no settlement) and the maximum amount that is being demanded or reasonably could be demanded. Where better information is not available, process and administrative costs are set at 10% of the compensation payouts. These are all nominal dollars; no adjustment for inflation can be attempted in the absence of dates for implementation.

The overall minimal cost consists of estimates for what has already been agreed to, but nothing further; the total would be about \$1.5 billion for payouts over five years plus \$205 administrative costs, or about \$1.7 billion. The overall maximum cost consists of estimates for what has already been agreed to plus estimated costs if all initiatives are carried through to the extent that claimants have demanded or are likely to demand. That total is a payout of \$5.2 billion plus \$0.465 billion administrative costs, or about \$5.7 billion. This large number should be considered an upper bound for what could conceivably happen; it is unlikely to be reached in a five-year period because negotiations with Indigenous peoples are always slow and unpredictable. (**figure 2; figure 3**)

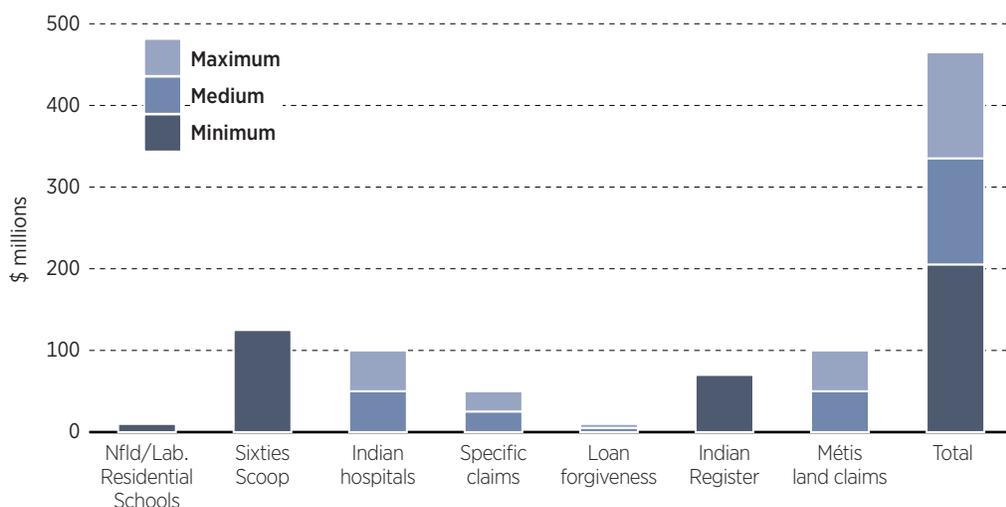
The total cost for five years is more likely to be near the medium estimate of \$3.1 billion payout plus \$0.335 billion process costs, for a total of about \$3.4 billion. This assumes that every unsettled claim is resolved with a midpoint compromise or, alternatively, that some negotiations reach a conclusion and others do not. Although precision about a future that has not yet happened is impossible, the hypothetical calculations suggest the order of magnitude of what is on the table.

Figure 2: Estimated ranges of the total five-year cost (\$ millions) of the Trudeau government’s compensation initiatives, 2019–2023



Sources: table 2; author’s calculation.

Figure 3: Estimated ranges of administrative costs (\$ millions) of the Trudeau government’s compensation initiatives, 2019–2023



Sources: table 2; author’s calculation.

Changes to the Indian Register will generate ongoing costs beyond the five-year framework discussed above. This may also be true of the Métis Reconciliation Framework, depending on what it eventually includes. And, as I have noted in passing, the success of current claims for compensation will probably give rise to new claims. However, apart from the PBO’s estimate of \$471 million a year ongoing costs for the Indian Register, there are too many unknowns to make any specific forecasts, except to say that openness to claims based on historical injustice will engender new outlays as time goes on.

The Reconciliation Framework and the Great Society

The program of the Reconciliation Framework bears some resemblance to President Lyndon Johnson's "Great Society," which embraced a number of legislative initiatives introduced in 1964 and 1965. The dual purpose, as Johnson explained in his 1964 University of Michigan commencement speech, was "an end to poverty and racial injustice" (Johnson, 1964). One aspect of the Great Society was the "War on Poverty," including expansive and expensive federal legislation in the areas of education, health, welfare, housing, and employment. The underlying theory was to break the "culture of poverty" by a set of coordinated interventions in almost all aspects of life (Gifford, 1986: 64). Another thrust of the Great Society was civil rights and anti-discrimination legislation to improve the legal and political status of minorities, above all African-Americans. The current Canadian government's program of reconciliation has a somewhat similar dual aspect—to transform the economic and social conditions of Indigenous peoples by wide-ranging and costly federal programs while also creating new nation-to-nation relationships between Canada and Indigenous peoples.

No matter what the cost of the Reconciliation Framework, most Canadians would probably think the expense was worthwhile if it achieved its objectives of raising the Indigenous standard of living closer to Canadian norms while also promoting a cooperative, harmonious relationship between Indigenous peoples and other Canadians. But the example of Lyndon Johnson's Great Society as it affected African-Americans, understood at the time to be the most important target because they were the largest in number and the most oppressed by previous centuries of slavery and segregation, is not encouraging.

Prior to the Great Society, the median individual income of African-Americans had been rising more rapidly than that of White Americans for several decades. That trend flattened and even decreased in the 1970s as the effect of Great Society programs began to be felt. Median individual Black income started to rise again in the 1980s as many Great Society programs were repealed or downsized, and since then has increased more or less parallel with median White individual income (Russell Sage Foundation, n.d.). Shortly after the Great Society legislation came into effect, African-Americans also experienced a worsening of many social and economic conditions—a drastic decline in marriage and increase in single motherhood; welfare dependency; an increase in unemployment, especially of

The Great Society

The *Great Society* is one in a series of North American progressive political slogans, including Franklin Roosevelt's *New Deal*, John F. Kennedy's *New Frontier*, and Pierre Trudeau's *Just Society*. Lyndon Johnson's *Great Society* slogan was formulated by his speechwriter Richard Goodwin, working in conjunction with Eric Goldman, a Princeton historian who had been recruited to work on the White House staff. Goldman's original suggestion was the *Good Society*, the title of a 1937 book by the political commentator Walter Lippmann, but Goodwin and Johnson preferred *Great Society* because of its greater political resonance (Dallek, 2004: 155-156). Drawing on a 1914 book by the Fabian socialist Graham Wallas, Lippman ([1937] 2005: 161-162) defined the *Great Society* as one characterized by widespread division of labour and international trade, so that people no longer fulfilled their needs in small, self-sufficient communities. He saw the *Great Society* not as a moral imperative but as an empirical description of historical evolution. For Lippmann, the moral challenge was to turn the *Great Society* into the *Good Society* by legislative reform, mainly of property law. Ironically, none of these thinkers, from Wallas to Johnson, seemed aware of Adam Smith's earlier use of the term to describe the perils of top-down reform:

The man of system, on the contrary, is apt to be very wise in his own conceit; and is often so enamoured with the supposed beauty of his own ideal plan of government, that he cannot suffer the smallest deviation from any part of it. He goes on to establish it completely and in all its parts, without any regard either to the great interests, or to the strong prejudices which may oppose it. He seems to imagine that he can arrange the different members of a *great society* [emphasis added] with as much ease as the hand arranges the different pieces upon a chess-board. He does not consider that the pieces upon the chess-board have no other principle of motion besides that which the hand impresses upon them; but that, in the great chess-board of human society, every single piece has a principle of motion of its own, altogether different from that which the legislature might choose to impress upon it. If those two principles coincide and act in the same direction, the game of human society will go on easily and harmoniously, and is very likely to be happy and successful. If they are opposite or different, the game will go on miserably, and the society must be at all times in the highest degree of disorder. (Smith ([1759] 1982: 233-234)

young people; escalating rates of crime, of which Black people themselves were the main victims; and violent protests that drove many businesses out of Black neighborhoods (Sowell, 2015: 155–172; Plumer, 2013).

Many things were happening at the same time, so one cannot make a grand causal claim that the Great Society worsened the condition of African-Americans. However, it obviously did not live up to President Johnson's announced goal of putting "an end to poverty and racial injustice." The historical record does raise questions about the efficacy of suddenly increasing government programming for a target minority population afflicted with numerous social and economic problems. This is true even, or perhaps especially, when government tries to tackle a large number of challenges simultaneously.

Table 3, drawn from the 2016 budget plan (Canada, 2016: 147), gives an idea of the breadth of the federal government's policy ambitions. The plans include provisions for various levels of formal education, language retention, child protection, victims of violence, housing, employment training, community health care, water treatment and solid waste disposal, to mention only the main headings—in other words, most aspects of life for Indigenous people. In fact, the federal government has been active in all of these areas in the past, so the budget announcement amounts to extension and/or expansion of funding for various line items. Yet all studies of Indigenous programming conducted by the Auditor General over the last 15 years "have consistently shown that government programs have failed to effectively serve Canada's Indigenous peoples" and the overall situation is "beyond unacceptable" (Auditor General, 2018). Will expanded funding be the key to success in areas where previous policy has failed? Is more money the answer, or is a new vision required?

Evidence is already accumulating that progress on these initiatives can be more difficult than anticipated. The government's most publicized commitment was to end all long-term water advisories on Indian reserves by 2021/22. Early in 2018, the Department of Indigenous Services Canada announced that 62 long-term water advisories had been lifted since November 2015, while 32 new ones had been added (INAC, 2018a). The announcement also provided a link to, but did not emphasize, the fact that 36 short-term water advisories had also been added in the same period of time (Lukawiecki, 2018). Recognizing the scale of the challenge, Budget 2018 added \$172.6 million to its original commitment of \$1.8 billion (Barrera, 2018).

Guaranteeing drinkable water for all reserves is a Sisyphean task because of fundamental problems of remote, sometimes swampy location and lack of technical expertise among small reserve populations. Even if the government reaches its announced goal of ending all long-term water advisories by 2021/22, that will be only a moment in time. New advisories will arise as a result of floods,

Table 3: A better future for Indigenous peoples (\$ millions)

| | 2015/16 | 2016/17 | 2017/18 | Total |
|---|---------|---------|---------|-------|
| Rebuilding the Relationship | | | | |
| <i>National Inquiry Into Missing and Murdered Indigenous Women and Girls</i> | | 20 | 20 | 40 |
| <i>Engaging With Indigenous Peoples</i> | | 16 | 20 | 36 |
| <i>Subtotal—Rebuilding the Relationship</i> | | 36 | 40 | 76 |
| Education, Children and Training | | | | |
| <i>Improving Primary and Secondary Education for First Nations Children</i> | | 288 | 383 | 670 |
| <i>Fostering Better Learning Environments by Investing in First Nations Schools</i> | | 97 | 283 | 380 |
| <i>Ensuring the Safety and Well-Being of First Nations Children</i> | | 71 | 99 | 170 |
| <i>Aboriginal Skills and Employment Training Strategy</i> | | 5 | 10 | 15 |
| <i>Subtotal—Education, Children and Training</i> | | 460 | 774 | 1,235 |
| Indigenous Peoples—Social Infrastructure | | | | |
| <i>Improving Housing in First Nations Communities</i> | | 277 | 277 | 554 |
| <i>Supporting Northern and Inuit Housing</i> | | 76 | 102 | 178 |
| <i>Providing Safe Shelter for Victims of Violence—Renovation and New Construction</i> | | 4 | 4 | 7 |
| <i>Supporting Early Learning and Child Care</i> | | 29 | 100 | 129 |
| <i>Investing in Cultural and Recreational Infrastructure</i> | | 35 | 42 | 77 |
| <i>Improving Community Health Care Facilities On Reserve</i> | | 82 | 82 | 164 |
| <i>Subtotal—Indigenous Peoples—Social Infrastructure</i> | | 503 | 607 | 1,109 |
| Indigenous Peoples—Green Infrastructure | | | | |
| <i>Strengthening On Reserve Water and Wastewater Infrastructure</i> | | 296 | 322 | 618 |
| <i>Addressing Waste Management for First Nations Communities</i> | | 15 | 96 | 112 |
| <i>Subtotal—Indigenous Peoples—Green Infrastructure</i> | | 311 | 418 | 729 |
| Other Initiatives | | | | |
| <i>Providing Safe Shelter for Victims of Violence—Shelter Operations</i> | | 5 | 5 | 10 |
| <i>Monitoring of Water on Reserve</i> | | 27 | 27 | 55 |
| <i>Investing in Community Infrastructure</i> | | 105 | 150 | 255 |
| <i>Métis Nation Economic Development Strategy</i> | | 5 | 5 | 10 |
| <i>Renewing the Urban Aboriginal Strategy</i> | | 24 | | 24 |
| <i>Assisting Indigenous Peoples Facing the Criminal Justice System</i> | | 4 | 4 | 8 |
| <i>Aboriginal Languages Initiative</i> | | 5 | | 5 |
| <i>Support for the First Nations Finance Authority</i> | | 10 | 10 | 20 |
| <i>Supporting First Nations Fishing Enterprises</i> | | 33 | | 33 |
| <i>Subtotal—Other Initiatives</i> | | 218 | 202 | 419 |
| Total | | 1,528 | 2,041 | 3,569 |
| <i>Less funds existing in the fiscal framework</i> | | -203 | -243 | -446 |
| Net Fiscal Cost | | 1,324 | 1,798 | 3,123 |

Note: Totals may not add due to rounding.

Source: Canada, 2016: 147.

obsolescence of older installations, and maintenance problems that are the result of a lack of trained personnel. Other communities in Canada support their water systems by a combination of provincial grants, property taxes, and consumer fees. If similar financial mechanisms are not introduced for water systems on reserves, the federal government's financial commitment will continue indefinitely.

The government's National Inquiry into Missing and Murdered Indigenous Women and Girls has also been plagued with difficulties, including complaints from relatives, fighting and resignations among commissioners and staff, and delays that have caused its mandate to be extended until April 2019. The government has announced that it is increasing various program expenditures by about \$50 million to conform to recommendations already made by the Inquiry (Macdonald, 2017; INAC, 2018b). Another problematic venture is the government's attempt to implement the Atlantic and Pacific Integrated Commercial Fisheries Initiatives mentioned in Budget 2016. In February 2018, the government announced that 25% of the surf clam quota would be reassigned to a new coalition of Atlantic First Nations partnering with Premium Seafoods (Canada, 2018b). However, this involved taking away quota from Clearwater Seafood, which had already partnered with other First Nations, for transfer to a group with allegedly better political connections. Litigation was threatened (Lake, 2018), then averted (Forrest, 2018b), then, finally, the whole thing was postponed for at least a year (Forrest, 2018c).

The main issue, however, is not the failure of particular programs; even if all initiatives worked as intended, there would be a fundamental problem because the Reconciliation Framework sees the well-being of Indigenous peoples as primarily a matter of government services. The path to well-being is always more extensive and better-funded services. But this outlook ignores a growing body of research showing that Indigenous peoples are more likely to improve their well-being through their own initiative if government will get out of the way and let them take over control of their own affairs (Flanagan, 2017b; Anderson, 2016; Cornell and Kalt, 1992).

It is telling that the phrase "own-source revenue," referring to money that Indigenous communities generate for themselves, does not appear in any of the three Liberal budget documents, in spite of extended discussion of Reconciliation. Yet research has shown that generation of own-source revenue is strongly correlated with the well-being of Canadian First Nations, as measured by the Community Well-Being Index (Flanagan and Johnson, 2015: 12–13). The Trudeau government's vision is mostly about transferring more federal money to First Nations and other Indigenous communities rather than encouraging these communities to become more self-sufficient.

To be fair, the Reconciliation Framework does contain funding for some elements of the self-improvement vision. Budget 2016 promised additional funding for the First Nations Finance Authority, which facilitates responsible borrowing for infrastructure projects on reserve, as well as for The First Nations Land Management Regime, which allows First Nations to make decisions for use of their reserve lands without recourse to ministerial approval (Canada, 2018a). And it is possible that something constructive will emerge out of all the talk about a new nation-to-nation relationship and self-determination. But in fiscal terms, these remain a very small aspect of this government's overall approach, which is mostly about increasing federal expenditures on Indigenous peoples. An increase of fiscal transfers does not make communities self-determining and self-supporting.

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Notre mission consiste à améliorer la qualité de vie des Canadiens et des générations à venir en étudiant, en mesurant et en diffusant les effets des politiques gouvernementales, de l'entrepreneuriat et des choix sur leur bien-être.

Peer review—validating the accuracy of our research

The Fraser Institute maintains a rigorous peer review process for its research. New research, major research projects, and substantively modified research conducted by the Fraser Institute are reviewed by experts with a recognized expertise in the topic area being addressed. Whenever possible, external review is a blind process. Updates to previously reviewed research or new editions of previously reviewed research are not reviewed unless the update includes substantive or material changes in the methodology.

The review process is overseen by the directors of the Institute's research departments who are responsible for ensuring all research published by the Institute passes through the appropriate peer review. If a dispute about the recommendations of the reviewers should arise during the Institute's peer review process, the Institute has an Editorial Advisory Board, a panel of scholars from Canada, the United States, and Europe to whom it can turn for help in resolving the dispute.

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